



Docket No.: 202930US0CIP



ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

RE: Application Serial No.: 09/776,781

Applicants: Jacques THEZE, et al.

Filing Date: February 6, 2001

For: PEPTIDES OF IL-2 AND DERIVATIVES THEREOF
AND THEIR USE AS THERAPEUTIC AGENTS

Group Art Unit: 1646

Examiner: MERTZ

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OCT 31 2002

TECH CENTER 1600/2900

SIR:

Attached hereto for filing are the following papers:

Response to Restriction Requirement (5 pp.)

Our check in the amount of \$0.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF:

Jacques THEZE, et al.

: GROUP ART UNIT: 1646

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FOR: PEPTIDES OF IL-2 AND DERIVATIVES THEREOF AND THEIR USE AS
THERAPEUTIC AGENTS

RESPONSE TO RESTRICTION REQUIREMENT

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

Responsive to the Official Action dated September 30, 2002, Applicants elect, with
traverse, Group XVI, Claims 15-26, for further prosecution.

REMARKS

Claims 1-65 are pending in the present application.

The Office has required restriction in the present application as follows:

Group I: Claims 1-4, drawn to an antibody which binds to a peptide of amino acid sequence of SEQ ID NO: 2;

Group II: Claims 1-4, drawn to an antibody which binds to a peptide of amino acid sequence of SEQ ID NO: 6;

Group III: Claims 5 and 10, drawn to a DNA sequence encoding a peptide of SEQ ID NO: 2 and a vector comprising the DNA;

Group IV: Claims 5 and 10, drawn to a DNA sequence encoding a peptide of SEQ ID NO: 6 and a vector comprising the DNA;

- Group V: Claim 6, drawn to a method of detecting in vitro the presence or activity of IL-2R using an antibody which binds to a peptide of amino acid sequence of SEQ ID NO: 2;
- Group VI: Claim 6, drawn to a method of detecting in vitro the presence or activity of IL-2R using an antibody which binds to a peptide of amino acid sequence of SEQ ID NO: 6;
- Group VII: Claim 7, drawn to a method of inhibiting the activity of IL-2R using a peptide of amino acid sequence of SEQ ID NO: 2;
- Group VIII: Claim 7, drawn to a method of inhibiting the activity of IL-2R using a peptide of amino acid sequence of SEQ ID NO: 6;
- Group IX: Claim 8, drawn to a method of inhibiting the activity of IL-2R using an antibody to a peptide of amino acid sequence of SEQ ID NO: 2;
- Group X: Claim 8, drawn to a method of inhibiting the activity of IL-2R using an antibody to a peptide of amino acid sequence of SEQ ID NO: 6;
- Group XI: Claims 9, 12-14, drawn to a method of using a peptide of amino acid sequence of SEQ ID NO: 2, by administering the peptide to a patient to induce the activities of IL-2;
- Group XII: Claims 9, 12-14, drawn to a method of using a peptide of amino acid sequence of SEQ ID NO: 6, by administering the peptide to a patient to induce the activities of IL-2;
- Group XIII: Claim 11, drawn to a method of treating a patient by using a vector comprising the DNA encoding a peptide of amino acid sequence of SEQ ID NO: 2;
- Group XIV: Claim 11 is drawn to a method of treating a patient by using a vector comprising the DNA encoding a peptide of amino acid sequence of SEQ ID NO: 6;
- Group XV: Claims 15-26, drawn to a peptide of amino acid sequence of SEQ ID NO: 2; and
- Group XVI: Claims 15-26, drawn to a peptide of amino acid sequence of SEQ ID NO: 6.

Applicants elect, with traverse, Group XVI, Claims 15-26, for further prosecution.

Applicants note that the claims of Groups I, III, V, VII, IX, XI, XIII, and XV are each drawn to SEQ ID NO: 2, and as such these groups are clearly related. In addition, Applicants

note that the claims of Groups II, IV, VI, VIII, X, XII, XIV, and XVI are each drawn to SEQ ID NO: 6, and as such these groups are clearly related.

In regard to Groups I and III and Groups II and IV, the Office has characterized the relationship between these two groups as "process of making and product made." Citing MPEP §806.05(f), the Office suggests the product as claimed can be made by another and materially different process such as "chemical synthesis." However, there is no evidence of record to show that the claimed products could be made as the Office has alleged. If, in fact, the claimed product can be made by "chemical synthesis," the Office has failed to show that the alleged process is materially different from the claimed process. Accordingly, Applicants respectfully submit that the Restriction Requirement is unsustainable, and it should therefore be withdrawn.

In regard to Groups I and XIII; Groups II and XIV; Groups I and V, IX; Groups II and VI, X; Groups XV and VII, XI; and Groups XVI and VIII, XII, the Office has characterized the relationship between these groups as product and process of use. Citing MPEP §806.05(h), the Office concludes that the claimed product can be "used as a hybridization probe," "used in immunochromatography," or "as an antigen in the production of antibodies." However, the Office has not provided reasons and/or examples to support this conclusion. Further, the Office has failed to show that the proposed processes are materially different from the claimed processes. Moreover, the claims of Groups I, III, V, VII, IX, XI, XIII, and XV are each drawn to SEQ ID NO: 2, and as such these groups are clearly related. In addition, Applicants note that the claims of Groups II, IV, VI, VIII, X, XII, XIV, and XVI are each drawn to SEQ ID NO: 6, and as such these groups are clearly related. Accordingly, Applicants respectfully submit that the Office has failed to meet the burden necessary in

order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

The Office has characterized the inventions of Groups I and VI-VIII, X-XVI; Groups II and V, VII-IX, XI-XVI; Groups III and V-XII, XIV-XVI; Groups IV and V-XIII, XV-XVI; Groups XV and V-VI, VIII-X, XII-XIV; and Groups XVI and V-VII, IX-XI, XIII-XIV, as unrelated. Citing MPEP §806.04 and MPEP §808.01, the Office concludes that “the different inventions are not disclosed as capable of use together.” However, the Office has not provided sufficient reasons and/or examples to support this assertion. The Office has merely stated the conclusion. Moreover, the claims of Groups I, III, V, VII, IX, XI, XIII, and XV are each drawn to SEQ ID NO: 2, and as such these groups are clearly related. In addition, Applicants note that the claims of Groups II, IV, VI, VIII, X, XII, XIV, and XVI are each drawn to SEQ ID NO: 6, and as such these groups are clearly related. Accordingly, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Accordingly, Applicants respectfully submit that the Restriction Requirement should be withdrawn.

Applicants respectfully traverse on the grounds that the Office has not shown that a burden exists in searching the entire application.

Further, MPEP §803 states as follows:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.

Applicants submit that a search of all claims would not constitute a serious burden on the Office, particularly in view of the fact that Groups I and II; Groups III and IV; Groups V and VI; Groups VII-VIII and XI-XII; Groups IX-X; Groups XIII-XIV; and Groups XV-XVI are classified in the same subclasses, respectively.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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